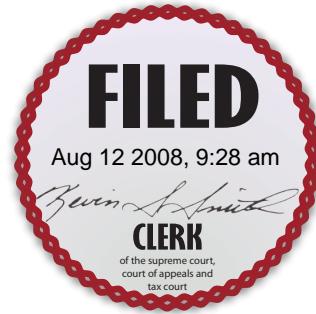


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

ERIC K. FARNSLEY,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 22A01-0801-CR-20
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE FLOYD SUPERIOR COURT
The Honorable Susan L. Orth, Judge
Cause No. 22D01-0708-FD-529

August 12, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Defendant Eric K. Farnsley appeals the sentence imposed following his guilty plea for Class D felony Intimidation¹ and the trial court's finding that he was a habitual offender. Farnsley alleges that his sentence was inappropriate in light of the nature of his offense and his character. We affirm.

FACTS AND PROCEDURAL HISTORY

On August 7, 2007, Farnsley drove to a convenience store located in Floyd County. Upon entering the convenience store's parking lot, Farnsley was pulled over by Floyd County Police Officer Dave Heath for failing to wear a seat belt. At the time Farnsley was pulled over, it was extremely hot outside, and Farnsley had his two-year-old son with him. Farnsley asked Officer Heath if he and his son could wait inside the convenience store while Officer Heath processed his information because he did not have air conditioning in his vehicle. Officer Heath rejected Farnsley's request.

Later that evening, Farnsley called the Floyd County Police Department. He notified the dispatcher that Officer Heath had stopped him earlier in the evening and indicated the following:

If that pig ever pulls me over again, he's going to see my M1. I just want to introduce another pig in this County to my M1. You know what I mean, if he pulls me over again he's going to see my M1, there's going to be another dead pig around here.^[2]

Appellant's App. p. 141.

¹ Ind. Code § 35-45-2-1(b)(1)(B)(i) (2007).

² The record indicates that within a few months prior to Farnsley's arrest, one Floyd County Police Officer had been killed in the line of duty, and another had been severely injured.

On August 10, 2007, the State charged Farnsley with Class D felony intimidation. The State later alleged that Farnsley was a habitual offender. On October 15, 2007, Farnsley pled guilty to Class D felony intimidation and admitted to being a habitual offender. Farnsley's plea agreement was open with respect to his sentence. On December 6, 2007, the trial court sentenced Farnsley to the maximum three-year sentence for Farnsley's intimidation conviction and enhanced Farnsley's sentence by the maximum four and one-half years for the habitual offender finding for a total executed sentence of seven and one-half years of incarceration in the Floyd County Jail. Farnsley now appeals.

DISCUSSION AND DECISION

Farnsley contends that we should exercise the authority granted to this court by Appellate Rule 7(B) and revise his seven-and-one-half-year sentence, which he believes is inappropriate in light of the nature of his offense and his character. This court has the constitutional authority to revise a sentence pursuant to Appellate Rule 7(B) if we find that it is inappropriate in light of the nature of the offense and the character of the offender; however, our review of any sentence is deferential to the trial court's decision. *Ind. Appellate Rule 7(B); Stewart v. State*, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). Therefore, if the sentence imposed is lawful, we will not reverse unless the sentence is inappropriate based on the character of the offender and the nature of the offense. *Boner v. State*, 796 N.E.2d 1249, 1254 (Ind. Ct. App. 2003). The burden lies with the defendant to persuade this court that his or her sentence is inappropriate. *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind.

2007) (citing *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)).

Farnsley claims that the sentence imposed by the trial court was inappropriate in light of the nature of his offense. Here, Farnsley was convicted of the intimidation of a police officer. The evidence established that Farnsley threatened the life of Officer Heath with a high-powered assault rifle just hours after Officer Heath had issued Farnsley a warning for failing to wear his seatbelt. Furthermore, Farnsley never accepted full responsibility for his actions, but rather blamed Officer Heath, calling Officer Heath “ornery” and stating that the entire situation was a misunderstanding that could have been prevented if Officer Heath “would act appropriately.” Tr. p. 19 & 20. The trial court determined that the nature of Farnsley’s offense was serious and stated that it was most concerned by Farnsley’s conduct because, instead of taking the three hours between Farnsley’s interaction with Officer Heath and Farnsley’s phone call to calm down and move on, Farnsley took the time to get “madder and madder” until Farnsley got himself so “worked up” that he called the police station and threatened to kill Officer Heath. Tr. p. 31. We share the trial court’s concern over Farnsley’s behavior and believe that Farnsley’s threat was not merely a “misunderstanding” as Farnsley claims, but, rather, was very serious. Therefore, we conclude that Farnsley’s sentence was appropriate in light of the nature of his offense.

Additionally, Farnsley claims that his sentence was inappropriate in light of his character. Farnsley’s lengthy criminal history, however, suggests otherwise. Farnsley’s criminal record dates back to his juvenile years, and his adult record contains six prior misdemeanor convictions and six prior felony convictions. Farnsley’s prior felony

convictions include theft, battery by bodily waste, battery of a child, and criminal recklessness, as well as a prior conviction for intimidation. Farnsley's criminal history has continuously escalated and includes previous violent offenses, including Farnsley's most recent conviction for criminal recklessness, which arose from a situation in which Farnsley shot a gun at his victim. Further, Farnsley has never successfully completed a period of probation because he has repeatedly refused to comply with the conditions imposed as a result of his probation. We believe that Farnsley's criminal history and his repeated refusal to comply with the conditions of his probation suggest that his character is wanting, and therefore we conclude that his sentence was appropriate in light of his character.

The judgment of the trial court is affirmed.

RILEY, J., and BAILEY, J., concur.